

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JOSEPH A. FERRARA, SR., et al.,

Plaintiffs,

- against -

ORDER  
11-CV-00992 (RRM)(SMG)

ON-PAR CONSTRUCTION LTD. d/b/a On Par  
Contracting,

Defendant.

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ROSLYNN R. MAUSKOPF, United States District Judge.

Plaintiffs, trustees and fiduciaries of various Local 282 trust funds (collectively “the Funds”), bring this action pursuant to the Employer Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1132 and 1145. Plaintiffs seek a judgment to recover monies allegedly owed by defendant to the Funds pursuant to ERISA and the terms of a Collective Bargaining Agreement (“CBA”).

Upon plaintiffs’ application and in light of the defendant’s failure to appear or otherwise defend this action, the Clerk of the Court noted the default of defendant on May 3, 2011. (Doc. No. 10.) Plaintiffs moved for a default judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure, and, on May 3, 2011, this Court referred that motion to the assigned Magistrate Judge, the Honorable Steven M. Gold, for a Report and Recommendation (“R&R”) on the issue of damages.

On December 20, 2011, Judge Gold issued a R&R recommending that judgment be entered against the defendant in the amount of \$686,292.47 in unpaid contributions, interest, and attorney’s fees and costs,<sup>1</sup> as well as additional amounts in interest and liquidated damages to be calculated by

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<sup>1</sup> Plaintiffs’ submissions in support of their motion for default judgment include a typographical error, which carried over into the R&R, resulting in a minor understatement of the proper calculation of costs. The appropriate costs

the Clerk of the Court. Judge Gold's R&R noted that, pursuant to Federal Rule of Civil Procedure 72(b), any objections to the R&R must be filed within fourteen days of the date of the R&R and, in any event, on or before January 6, 2012. The R&R also directed plaintiffs to serve a copy of the R&R upon defendant at its last known address, and to file proof of service with the Court. On December 20, 2011, counsel for plaintiffs filed a certification that he had served the R&R upon On-Par Construction Ltd. d/b/a On Par Contracting, 815 McLean Avenue, Yonkers, New York 10704, via first class mail. To date, no party has filed any objections.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, the Court has reviewed the R&R for clear error, *see Covey v. Simonton*, 481 F. Supp. 2d 224, 226 (E.D.N.Y. 2007), and finding no such error, adopts the R&R in its entirety, with one minor correction arising from a calculation error by plaintiffs that carried over into the R&R and resulted in a small understatement of the total costs sought and ultimately awarded by the magistrate judge. The costs sought include: \$350 for the filing fee, \$62 for service, and \$273.94 in other costs, which total \$685.94, not \$658.94 as Plaintiffs incorrectly calculated. (*See* Adler Decl. ¶ 13 (Doc. No. 8).) The proper calculation results in a total of \$6,050.44 in costs and attorney's fees to be awarded.

#### CONCLUSION

Accordingly, it is hereby ORDERED that plaintiff's motion for default judgment (Doc. No. 6) is GRANTED. Judgment shall enter against the defendant for \$397,700.66 in unpaid contributions, \$282,568.37 in interest, and \$6,050.44 in attorney's fees and costs; plaintiffs shall be awarded interest at the rate of 18% per annum, beginning from April 13, 2011 on the \$397,700.66 in unpaid contributions, to be calculated by the Clerk of the Court at the time of judgment; and

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include: \$350 for the filing fee, \$62 for service, and \$273.94 in other costs, which total to \$685.94, not \$658.94 as Plaintiffs stated. (*See* Adler Decl. ¶ 13 (Doc. No. 8).) This results in \$6,050.44 in attorney's fees and costs, and a judgment of \$686,319.47 along with additional interest and damages to be calculated by the Clerk of Court.

plaintiffs shall be awarded liquidated damages in an amount equal to the \$282,568.37 in interest plus the interest calculated by the Clerk.

The Clerk of Court is directed to enter judgment accordingly, mail a copy of this Order and the judgment to defendant, On-Par Construction Ltd. d/b/a On Par Contracting, 815 McLean Avenue, Yonkers, New York 10704, and close this case.

SO ORDERED.

Dated: Brooklyn, New York  
January 9, 2012

*Roslynn R. Mauskopf*

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ROSLYNN R. MAUSKOPF  
United States District Judge